

RULEMAKING NOTICE FORM

Notice Number 2016-191 Rule Number He-M 315

1. Agency Name & Address: Dept. of Health & Human Services Division of Behavioral Health Bureau of Mental Health Services 105 Pleasant Street-Main Building Concord, NH 03301	2. RSA Authority:	<u>RSA 135-C:61, III</u>
	3. Federal Authority:	<u></u>
	4. Type of Action:	
	Adoption	<u>X</u>
	Amendment	<u></u>
	Repeal	<u></u>
	Readoption	<u></u>
	Readoption w/amendment	<u></u>

5. Short Title: **Rights of Persons Receiving Peer Support Services**

6. (a) Summary of what the rule says and of any proposed amendments:

He-M 315 describes the rights of persons who receive peer support services. The rule describes membership, notice of rights, fundamental and personal rights, as well as suspension of membership or participation, and complaint procedures.

The Department of Health and Human Services (Department) proposes to adopt He-M 315 as the former rule expired on October 6, 2013. The proposal amends the former rule by adding a definition for the terms “department” and “peer”, deleting the term “consumer”, and by updating, definitions for the terms “member”, participant”, and “discrimination.”

The proposal includes requirements that peer support agencies provide a written summary of any actions resulting in suspension of a peer member, but increases the maximum possible suspension period from 6 months to 12 months. The proposal changes the name of He-M 315.10 from “Grievance Procedures” in the former rule to He-M 315.10 “Complaint Procedures”. The proposal adds He-M 315.08(f) relating to providing off-site services for a member or participant who has been suspended from receiving services at the peer support agency premises, and adds “criminal activity” and “substance abuse on the peer support agency premises” to the areas that the peer support agency is required to develop rules.

6. (b) Brief description of the groups affected:

Those affected by the rule include peer support agencies, their staff and the members or participants who receive peer support services.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>RULE</u>	<u>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</u>
He-M 315	RSA 126-N:3; & RSA 135-C:5, I

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Catherine Bernhard	Title:	Rules Coordinator
Address:	Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9374
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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, November 10, 2016**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, November 3, 2016 at 9:30 a.m.**

Place: [**DHHS Brown Building, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **16:177**, dated **09/14/16**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable, as these rules expired in October 2013.

2. Cite the Federal mandate. Identify the impact of state funds:

There is no federal mandate, and no impact on state funds.

3. Cost and benefits of the proposed rule(s):

He-M 315 "Rights of Persons Receiving Peer Support Services," expired on 10/6/13. The Department proposes to adopt He-M 315 with amendments to the former rule by updating, adding definitions, clarifying complaint procedures and adding proposed He-M 315.08(f) relative to provision of off-site services by peer support agencies for members or participants who have been suspended from receiving services at agency premises. In general, He-M 315 describes the rights of persons who receive peer support services at the agency premises. The proposed rule describes membership, notice of rights, fundamental and personal rights and suspension of membership or participation and complaint procedures.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

Adopt He-M 315, previously effective 10-6-05 (Document #8445) and expired 10-6-13, to read as follows:

PART He-M 315 RIGHTS OF PERSONS RECEIVING PEER SUPPORT SERVICES

Statutory Authority: RSA 126-N:4

He-M 315.01 Purpose. The purpose of this part is to define the rights of members and participants who are receiving peer support services from providers that receive funding from the State of New Hampshire and to establish the responsibilities of peer support agencies (PSA) relative to such rights.

He-M 315.02 Applicability. Nothing in this part shall affect issues between members or participants of a PSA that do not arise out of the operations of the PSA.

He-M 315.03 Definitions.

(a) “Abuse” means an act or omission by an employee, consultant or volunteer of a PSA which is not accidental and harms or threatens to harm a member’s or participant’s physical, mental or emotional health or safety and includes emotional abuse, physical abuse and sexual abuse.

(b) “Culturally competent” means having attained the knowledge, skills and attitudes necessary to provide effective supports, services, education and technical assistance to populations in the geographic area served by the agency.

(c) “Department” means the New Hampshire department of health and human services.

(d) “Discrimination” means an action or a failure to act that has the effect of excluding a consumer from participation, subjecting a member to unequal treatment, or harassing a member because of and on the basis of:

- (1) Race;
- (2) Color;
- (3) Sex;
- (4) Sexual orientation;
- (5) Marital status;
- (6) Religion;
- (7) National origin;
- (8) Age;
- (9) Disability;

(10) Socio-economic class;

(11) Political ideology;

(12) Veterans status; or

(13) Gender identity.

(e) “Emotional abuse” means:

(1) The misuse of power, authority or both;

(2) Verbal harassment; or

(3) Unreasonable confinement that results or could result in mental anguish or emotional distress of a member.

(f) “Exploitation” means the use of a member’s or participant’s person or property for another’s profit or advantage or breach of a fiduciary relationship through improper use of a member’s person or property including situations where a person obtains money, property or services from a member or participant through undue influence, harassment, deception or fraud.

(g) “Guest” means any person who is invited to visit the PSA by a member, a participant, or the PSA.

(h) “Member” means any peer, who has made an informed decision to join, and agrees to support the goals, objectives, rights and responsibilities of, the PSA.

(i) “Neglect” means an act or omission which results or could result in the deprivation of essential services necessary to maintain the minimum mental, emotional or physical health of a member or participant.

(j) “Participant” means a peer, whether or not he or she is a member, who participates in any aspect of the PSA.

(k) “Peer” means any individual, 18 years of age or older, who self identifies as having lived experience as a former recipient, or as at significant risk of becoming a recipient of publicly funded mental health services.

(l) “Peer support agency (PSA)” means an organization whose primary purpose is to provide culturally competent peer support to peers 18 years of age or older.

(m) “Physical abuse” means the use of physical force which results or could result in physical injury to a member or participant.

He-M 315.04 Membership.

(a) All peers shall be granted access to services provided by a PSA except as provided in He-M 315.08.

(b) All peers seeking membership in a PSA shall be granted membership at no charge.

(c) Membership meetings shall be convened for the purpose of seeking membership input and feedback into planning and delivery of services.

(d) Board of director meetings shall be open to members except upon majority vote to enter an executive session limited to board members.

He-M 315.05 Notice of Rights.

(a) Each PSA shall provide members and participants with a verbal and written summary, in clearly understandable language and form, of their rights and responsibilities pursuant to He-M 315 and notification of the complaint procedures.

(b) A notice of member and participant rights and rules, pursuant to He-M 315.09, shall be permanently posted in a public area and be presented in clearly understandable language and form.

(c) Each PSA shall have on the premises and available for review a complete set of rules pertaining to:

- (1) Member and participant rights;
- (2) Member and participant rules;
- (3) Complaint procedures; and
- (4) Appeal procedures.

He-M 315.06 Fundamental Rights.

(a) No PSA shall deprive a member or participant of any legal right to which all citizens of New Hampshire and the United States are entitled.

(b) The legal rights protected shall include, at a minimum:

- (1) The right of freedom of religion and religious preference, including the right to be free from engaging in any religious activity or practice; and
- (2) The right not to be discriminated against in any manner as defined 315.03 (c)

He-M 315.07 Personal Rights.

(a) Persons receiving services from a PSA shall have the right to be treated by PSA staff, volunteers and consultants with dignity and respect at all times.

(b) Staff, volunteers and consultants of a PSA shall not abuse, neglect, or exploit agency members or participants.

(c) Staff, volunteers and consultants of a PSA shall respect the privacy of members and participants.

(d) A PSA shall maintain the confidentiality of membership records except as in (e) below.

(e) A PSA may disclose to law enforcement personnel that information necessary to report a crime committed at the agency.

(f) The PSA shall disclose the information specified in (e) above:

- (1) To the department of health and human services;
- (2) When required to report abuse or neglect of a child pursuant to RSA 169-C;
- (3) When required to report abuse, neglect or exploitation of an adult pursuant to RSA 161-F; and
- (4) As otherwise required by law.

(g) Members and participants of a PSA shall have the right to privacy including the following:

- (1) The right to courtesies such as knocking on closed doors before entering; and
- (2) The right to have reasonable access to a telephone and a computer, if one is available for use, with such privacy as agency facilities allow, provided that members and participants may be required to pay for long distance calls.

He-M 315.08 Suspension of Membership or Participation.

(a) A PSA shall suspend a member or participant for the day and require him or her to immediately leave the agency premises under the following circumstances:

- (1) The member or participant engages in behavior that poses an imminent risk of harm to the health and safety of others in the agency;
- (2) The member or participant engages in behavior which poses an imminent risk of harm to his or her own health or safety; or
- (3) The member or participant is verbally abusive of others in the agency.

(b) A PSA may suspend a member or participant for up to 12 months under the following circumstances:

- (1) The member or participant steals or destroys the property of the PSA or any person while on the premises of the PSA;
- (2) The member or participant engages in behavior that substantially interferes with the use and enjoyment of the premises by others; or
- (3) The member or participant violates a rule of the PSA for which the rules of the PSA impose such a suspension.

(c) If the member or participant denies allegations made pursuant to a suspension and files a complaint pursuant to He-M 315.10, a proposed suspension under He-M 315 shall not be effective unless:

- (1) The member or participant is arrested by the police; or
- (2) The allegation is founded following a review pursuant to the PSA's internal complaint procedures.

(d) Whenever a member or participant is directed to leave a PSA pursuant to He-M 315, the agency shall, no later than 24 hours after the person is excluded, create a written record which contains the following information:

- (1) A full description of the member's or participant's behavior that resulted in him or her being directed to leave the PSA; and
- (2) The PSA shall make good faith effort to obtain the signature(s) of the individual(s) who witnessed the behavior.

(e) Any member or participant suspended from services available on-site at a PSA shall be eligible for off-site services offered by the PSA, such as warm-line services, provided that he or she agrees to comply with all rules of the PSA.

(f) Any member or participant suspended from services available off-site shall be eligible for on-site services offered by the PSA, provided that he or she agrees to comply with all rules of the PSA.

(g) Guests shall adhere to the same rules as members and participants and leave the premises of a PSA if requested to by PSA staff.

(h) Any member or participant suspended pursuant to He-M 315 for a period of more than 5 days shall be reinstated following the suspension period at such time as a reentry plan developed by the member or participant which addresses the circumstances that led to the suspension is accepted by the PSA director or his or her designee.

(i) Any member or participant subject to suspension may exercise his or her rights as provided in He-M 315.

He-M 315.09 Member and Participant Rules.

(a) A PSA shall adopt rules for members and participants as determined by the board of directors to be necessary for the safe and effective operation of the PSA provided that such rules do not conflict with state or federal law or rule.

(b) When PSA rules are developed or revised, staff shall solicit comments from members.

(c) A PSA shall grant members the right to vote on PSA business at member meetings and vote at annual meetings to elect a board of directors.

(d) A PSA may develop sanctions for rules violation. Sanctions shall not include permanent expulsion.

(e) Each PSA shall have rules that address:

- (1) Use of telephone, fax, computers and other PSA resources available for use by members and participants;
- (2) Substance use on agency property by members and participants;
- (3) Code of conduct of members and participants;
- (4) Suspension and reentry procedures;
- (5) Privacy and confidentiality; and
- (6) Criminal activity.

(f) PSA rules shall be posted in a public area and reviewed by staff with each member at the time the member joins.

(g) Any PSA rules or revisions of those rules, including any sanctions, shall be forwarded to the department for review prior to adoption by the board. PSA rules that conflict with state or federal law or rule, shall not be adopted.

He-M 315.10 Complaint Procedures.

(a) Every member, participant, and applicant for membership shall have the right to file a complaint, which may be made either orally or in writing. A complainant may request to keep his or her identity confidential throughout the complaint process. If the complainant requests to have their identity kept confidential, they shall be notified that it may interfere with the investigation and/or the resolution of the complaint.

(b) Each PSA shall establish complaint procedures that include:

- (1) Informal means by which a member's or participant's complaints can be addressed;
- (2) A formal process to investigate allegations that a member's or participant's rights have been violated by agency staff, volunteers, consultants, or peers; and
- (3) An immediate review by the PSA director or his or her designee when a member or participant is suspended.

(c) Each PSA shall investigate and attempt to resolve every complaint for which a formal investigation is requested.

(d) A PSA shall provide a member or participant who files a complaint the opportunity to have someone assist him or her in presenting the complaint. If the member or participant cannot obtain assistance, the agency staff, upon the member's or participant's request, shall attempt to obtain assistance for such person from available advocacy services.

(e) The investigation of a member's or participant's complaint shall not be conducted by any person who participated in the action or decision that is the subject of the grievance.

(f) Following completion of a formal investigation, the board of directors of the PSA shall issue a written decision to the member or participant within 20 business days setting forth the disposition of the complaint. The PSA shall immediately forward a copy of the decision to the office of client and legal services (OCLS).

(g) A member or participant may appeal the finding and proposed resolution to his or her complaint in accordance with He-M 202, rights protection procedures, and He-C 200, rules of practice and procedure.

(h) He-M 315, He-M 402, He-M 202 and He-C 200 shall be available at every PSA in a public location for review.

(i) Each PSA shall forward its complaint procedure and any proposed revisions to the complaint procedure to the OCLS for review and consultation prior to implementation. PSA procedures that conflict with He-M 315 shall not be implemented.

Appendix

Rule	Statute
He-M 315	RSA 126-N:3; RSA 135-C:1